

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'SMC' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.2339/Bang/2024
Assessment Year: 2019-20

Sree Venkateshwara Souharda Credit Co-operative Limited., No.1, New Bus Stand Road, Pavagada, Tumkur – 561 202.  <b>PAN – AAIAS 8061 J</b>	Vs.	The Income Tax Officer, Ward – 2, Tumkur.  .
APPELLANT		RESPONDENT

Assessee by	:	Shri Aprameya K, Advocate
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Dept. (DR)

Date of hearing	:	27.02.2025
Date of Pronouncement	:	25.04.2025

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the order passed by the Addl/JCIT(A), Jodhpur dated 21/10/2024 in DIN No. ITBA/APL/S/250/2024-25/1069823200(1) for the assessment year 2019-20.

2. The relevant facts are that the assessee is a cooperative society registered under The Karnataka Souharda Sahakari Act, 1997. The appellant assessee filed return of income for the year under dispute i.e.

2019-20 as on 25<sup>th</sup> September 2019 declaring total income at Rs. Nil after claiming deduction under section 80P(2)(a)(i) of the Act for Rs. 27,07,176/- only.

3. The CPC while processing the return found that as per section 139(1) of the Act, the due date for filing return of income was on or before the 31<sup>st</sup> August 2019 whereas the assessee filed return after the due date as on 25<sup>th</sup> September 2019. Hence the CPC in the intimation order passed under section 143(1) of the Act, dated 22<sup>nd</sup> February 2020, disallowed the claim of deduction under section 80P of the Act.

4. The aggrieved assessee preferred an appeal before the learned CIT(A). The appeal filed before learned CIT(A) was delayed by 1570 days.

5. The assessee in the delay condonation application claimed that appeal was not filed within the prescribe limit for the reason that instead of filing appeal it preferred to raise a grievance before the jurisdictional AO through rectification application which was filed on 21<sup>st</sup> December 2022. The JAO did not respond to the rectification application despite making multiple follow up. Finally, the authority from CPC responded as on 12<sup>th</sup> February 2024 and stated that the rectification application transferred to JAO. Therefore, the assessee visited the office of JAO on 03<sup>rd</sup> May 2024 and came to know that the rectification order cannot be passed as the same is time barred as per the provisions of section 154(7) of the Act.

6. However, the learned CIT(A) dismissed delay condonation application and consequently dismissed the appeal of the assessee by holding as under:

*The facts of the case and the grounds raised by the appellant have been considered carefully. It is noticed that there is a delay in filing of appeal. The appeal is to be filed within 30 days of the date of the service of the order. During the appellate proceedings, it is found from the Form No. 35 that the appellant filed the present appeal on 10.06.2024 whereas the date of order u/s 143(1) was on 22.02.2020 and as per Form No. 35, the date of service of order was 22.02.2020. As per the dates given in Form 35, it appears that the appeal is filed beyond the prescribed due date. The appellant has stated that it had waited for outcome of the rectification application is not acceptable as filing of appeal and filing of rectification application are two separate legal processes and these cannot prevent appellant to file the appeal in time. The reasons stated by the appellant have been perused but are not found to be tenable as the appellant has failed to demonstrate sufficient cause or any other hardship for delay in filing of the present appeal and hence, the same cannot be condoned. The above view has also been taken by Hon'ble High Court of Madras in the case of Siva Industries & Holdings Ltd. Vs Assistant Commissioner of Income-tax, Company Circle VI(3), Chennai [2023] 153 taxmann.com 354 (Madras) in a recent decision.*

*Thus, the appeal filed by appellant is not maintainable as the same is filed beyond the time limit permitted u/s 249 of the IT Act for filing of appeal and there is no sufficient cause for delay in filing of appeal, which can be condoned. Accordingly, the appeal of the appellant is treated as dismissed u/s 250 r.w.s. 251 of the Act without considering the merits of the appeal filed.*

**4. In the end, the present appeal is dismissed.**

7. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

8. The learned AR for the assessee before us contended that the intimation issued under section 143(1) of the Act was merged with the intimation challenged before the Commissioner through CPGRAM, and as per the doctrine of merger, all prior intimations stand merged with the CPGRAM proceedings.

9. Further, it was submitted that the assessee had rightfully claimed deduction under section 80P of the Act to the extent of Rs. 27,07,176/-

only. The AR pointed out that the intimation dated 22.02.2020 wrongly disallowed the 80P deduction by considering the due date for filing the return as 31.08.2019 instead of the correct date, 31.10.2019. Furthermore, the delay in rectification was justified as the limitation period had been extended by the Hon'ble Supreme Court due to COVID-19. The assessee had filed a rectification application on 21.12.2022, but no response was received for over two years. Although the CPC subsequently closed the case, it had remained pending until 12.02.2024, and the time consumed in processing the application should be excluded when computing the period of limitation.

10. The AR emphasized that the rejection of the rectification application on the ground that no hard copy was filed is untenable, particularly in the context of a paperless system now adopted by the Income Tax Department. The contents of the application clearly showed a mistake apparent on record regarding the disallowance of deduction under section 80P of the Act, which ought to have been rectified under section 154 of the Act.

11. Moreover, the Id. AR contended there was a gross violation of the principles of natural justice as no notice or opportunity for a personal hearing was granted before passing the order. Reliance was placed on the Supreme Court judgment in *The Excise Commissioner Karnataka & Ors. vs. Mysore Sales International Limited*, reported in 164 taxmann.com 220 wherein it was held that even in the absence of an express provision, notice and opportunity of hearing must be provided where an order entails adverse civil consequences.

12. Additionally, the Id. AR submitted that the delay in filing the appeal should be condoned, especially as the delay was explained by an affidavit. The Commissioner (Appeals) had dismissed the appeal solely on the ground of limitation without examining the cause of delay or the merits of the case. As per the Id. AR it is the trite law that courts should prioritize the cause of delay over its duration when dealing with applications for condonation.

13. Finally, the AR relied on the judgment in *COMMR. OF INCOME TAX, KOLKATA-II vs. WEST BENGAL INFRASTRUCTURE DEV. FIN. CORPN. LTD.*, 2012 (279) E.L.T 3 (SC) where the Hon'ble Supreme Court allowed an appeal on merits despite delay and emphasized that high-stake matters should not be dismissed solely due to procedural lapses, especially where the delay was not attributable to the assessee.

14. On the other hand, the learned DR submitted that the appeal filed by the assessee against the order of the Id. CIT(A) is devoid of merit and deserves to be dismissed. It was emphasized that the Id. CIT(A) had already dismissed the assessee's appeal on the ground of limitation, and no findings were required on the merits, as the assessee had failed to comply with the statutory requirements within the prescribed time.

14.1 On the merits of the claim under section 80P of the Income Tax Act, the Id. DR argued that the assessee had not filed its return of income within the due date as prescribed under section 139(1) of the Act. While the assessee claimed that it had filed the return on 25.09.2019 and relied on the CBDT's extension of the due date to 31.10.2019, the DR pointed out that this extension was applicable only

to those assesseees who were required to file a tax audit report along with the return. In the present case, the assessee neither filed its tax audit report nor mentioned the requirement for audit in its return of income.

14.2 The Id. DR further submitted that as per the CBDT Circular dated 27.09.2019, the extended due date for filing the return of income was meant only for assesseees facing genuine difficulties in furnishing their tax audit reports. Since the assessee did not claim to be under audit, the benefit of the extended due date does not apply. Therefore, the return filed by the assessee cannot be treated as filed within the due date, making it ineligible for deduction under section 80P of the Act.

14.3 The Id. DR submitted that if the assessee is not liable for audit, the benefit of the CBDT's extended deadline does not apply. A copy of the order dated 30.01.2023 was submitted as Annexure B to support this argument. The Id. DR concluded by asserting that the assessee's claim under section 80P of the Act was rightly disallowed by the CPC and urged the Tribunal to uphold the lower authorities' orders and dismiss the appeal.

15. I have carefully considered the submissions made by both the parties and examined the records available before me. The assessee, a cooperative society registered under the Karnataka Souharda Sahakari Act, 1997, had filed its return of income on 25.09.2019 and claimed deduction under section 80P of the Act. The CPC, however, disallowed the claim solely on the ground that the return was filed after the due date.

15.1 It is an admitted position that the appeal before the learned CIT(A) was filed belatedly by 1570 days. The delay was explained by the assessee on the basis that it had chosen to pursue a rectification route rather than the appellate remedy, due to a bona fide belief that the disallowance was a clear mistake apparent from the record and could be rectified under section 154 of the Act. The rectification application was filed in good faith and was pending for over two years before it was finally closed. Given this background, we find that the explanation for delay is a genuine and under the bona-fide belief and not due to negligence or deliberate non-compliance. Therefore, in the interest of substantial justice, we deem it appropriate to condone the delay and admit the appeal for adjudication on merits.

15.2 On the merits of the matter, we note that the appellant is registered under the Karnataka Souharda Sahakari Act, 1997. Section 37 of the said Act mandates every such cooperative society to get its accounts audited. Accordingly, the appellant was under a statutory obligation to get its accounts audited under the provisions of Karnataka Souharda Sahakari Act. It is also significant that the Central Board of Direct Taxes (CBDT), via its circular dated 27.09.2019, extended the due date for filing of returns of income and audit reports for all assesseees who were required to furnish such documents under clause (ii) of the second Explanation to Section 139(1) of the Income Tax Act. The said Explanation explicitly includes audit requirements under "this Act or under any other law for the time being in force."

15.3 In view of this, the assessee being subject to audit under the Karnataka Souharda Sahakari Act, 1997, is covered within the scope of

the said clause and is entitled to the benefit of the extended due date of 31.10.2019. Consequently, the return filed on 25.09.2019 was well within the extended due date, and the denial of deduction under section 80P of the Act on the sole ground of late filing is unsustainable in law.

In conclusion, we hold that the assessee's appeal deserves to be allowed. The delay in filing the appeal before the Id. CIT(A) is condoned, and on merits, the deduction under section 80P of the Act is allowable as the return was filed within the extended due date applicable to the assessee. Accordingly, the order of the Id. CIT(A) is set aside, and the AO is directed to allow the deduction as claimed.

16. In the result, the appeal of the assessee is allowed.

Order pronounced in court on 25<sup>th</sup> day of April, 2025

**Sd/-**

**(WASEEM AHMED)**  
Accountant Member

Bangalore  
Dated, 25<sup>th</sup> April, 2025

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore